

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
I.A. NO. 03/2017
IN
TCP NO. 26/237, 397-398/NCLT/MB/MAH/2014**

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 237, 397-
398 of the Companies Act, 1956;

And

In the matter of Sections 241 & 242
of the Companies Act, 2013.

BETWEEN:

Mr. Shridhar Vasudeo Bedekar & Ors. .. Petitioners

AND

M/s. V.P. Bedekar And Sons Pvt. Ltd. & Ors... Respondents

PETITIONERS

1. Mr. Shridhar Vasudeo Bedekar
A-6/12, Sarita Mangalya Co-op. Hsg. Soc.,
Sarita Nagari, Phase – I, Ganeshmala,
Pune – 411 030 .. Petitioner No.1
2. Mr. Suhas Shridhar Bedekar .. Petitioner No.2
As above
3. Mr. Sanjay Shridhar Bedekar .. Petitioner No.3
As above

RESPONDENTS

1. M/s. M/s. V.P. Bedekar And Sons Pvt. Ltd.
56, Gharpure Path, Girgaum,
Mumbai 400 004 .. Respondent No.1
2. Mr. Vasant Vasudeo Bedekar
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.2
3. Mr. Atul Vasant Bedekar
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.3
4. Mr. Ajit Vasant Bedekar
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.4
5. Mr. Mandar Trimbak Bedekar
Badekar Sadan No.4
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.5
6. M/s. V. D. Khadilkar & Co.
Chartered Accountants
Flat No.6, Dnyaneshwari
R.A. Kidwai Road
Wadala, Mumbai 400 031. .. Respondent No.6
7. Mr. Vasudeo Anant Bhide
Chartered Accountant
Temple Bar Building, 2nd Floor
147, M.G. Road
Fort, Mumbai 400 023. .. Respondent No.7
8. M/s. Bedekar Masalewale Pvt. Ltd.
Badekar Sadan No.3
56, Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.8
9. M/s. Bedekar Pickles Pvt. Ltd.
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.9

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONERS

Ms. Anagha Anasingaraju, Practicing Company Secretary i/b Kanj & Assdociates.

FOR THE RESPONDENTS

Mr. Sameer Pandit, Advocate and Ms. Madhupreetha Elango i/b. M/s. Wadia Ghandy & Co.

ORDER

Reserved on : 08.02.2017

Pronounced on : 13.02.2017

1. An Interlocutory Application filed on 6th February, 2017 seeking Interim Relief to grant permission for "Leave and License" of Unit No. C/9 and Unit No. C/10 and 11 (Galas) on monthly License Fees.
2. The Learned Representative of the Applicant (Respondent of the main Petition) has stated that an Order was passed on 15th of February, 2016 by the Company Law Board (C.P. No.26/MB/2015) wherein it was directed that Respondent No.1 Company shall maintain a status-quo with regard to the fixed assets, but with an exception that if necessity is felt to alienate or dispose of any immovable property, the same can be done only after obtaining prior permission of the Board.
3. The Learned Representative has informed that the said direction was diluted when the matter reached to the Hon'ble Bombay High Court (Company Application No.18 of 2016 in Appeal

No. 17 of 2016 in Company Application No. 190 of 2015 in Company Petition No. 26 of 2014) vide an Order dated 22nd April, 2016. The direction of the CLB vide Order dated 15th of February, 2016 were modified. For ready reference the directions of the Hon'ble Court are reproduced verbatim below :-

- "a) The Company shall notify Respondent Nos.1 to 3 in writing of any proposal for transfer of tenancy along with details of the terms of such transfer, including the name of the outgoing tenant and the proposed transferee and the consideration payable to the Company.
- b) Within 14 days of receipt of the Notice of Transfer, Respondent Nos. 1 to 3 shall have the right to propose in writing the name of any third party transferee not related to Respondent Nos.1 to 3, who would be willing to acquire the tenancy on the same terms and for consideration that is at least 5% higher than the consideration set out in the Notice of Transfer. Such proposal shall be accompanied by a written and unconditional offer from the proposed transferee to the Company ("Counter Offer").
- c) Upon receipt of any such proposal from Respondent Nos.1 to 3, the Company shall be at liberty to accept or reject the Counter Offer. In the event the Company rejects the Counter Offer, then and in that event it shall not transfer the same tenancy without issuing a fresh Notice of Transfer, following the procedure set out in (a) and (b) above.
- (d) In the event Respondent Nos. 1 to 3 fail to respond with a valid Counter Offer to the Notice of Transfer within 14 days from the receipt of the Notice of Transfer, then and in that event the Company shall be at liberty to transfer the tenancy to any unrelated third party of its choice on the terms and consideration set out in the Notice of Transfer."

4. The Learned Representative has also pleaded that there was no restriction in dealing with the properties on "Leave and License basis" which is different than dealing of the property on "Tenancy basis". Certain Case Laws on this legal point has been quoted.

5. Ld. Advocate from the side of the Respondent to the Application (Petitioner of the main Petition) has vehemently objected the said proposal of dealing with the properties on "Leave and License" basis. According to him, it is nothing but an act of

oppression by the Respondents of the Petition. He has referred a letter addressed to the Petitioners written by the Advocate of the Respondent No.1 Company through which it is informed that a proposal was received to give on "Leave and License basis" certain Galas to IPC Health Care and Rahul Distributors. Although admittedly the said information was received vide letter dated 17th January, 2017, however, immediately thereafter on 23rd January, 2017 Petitioner No. 2 Mr. Suhas Bedekar (for self and on behalf of Petitioner Nos.1 and 3) has not only objected for the said proposal but also informed that the status-quo should be maintained. It was also objected that the Respondent Company was not granted any right by the Hon'ble High Court to transfer the property on Leave and License basis. Learned Advocate has also pleaded that certain information was demanded in the said letter so that a counter proposal could be made, but so far not responded.

6. In the light of the above factual background the Interlocutory Application (I.A. 03 / 2017), matter is heard at some length. Records of the case have been perused. An Order was passed by the then CLB on 15th of February, 2016 which was challenged before the Hon'ble High Court of Bombay and vide an Order dated 22nd April, 2016 the said Order of the CLB was modified as reproduced supra. At this juncture, it is worth to mention that once an Order of the lower Authority has been challenged through an Appeal before the higher Judicial Forum, then the Order of the lower Judicial Authority gets merged into the Appellate Order. Therefore, for the disposal of this Application, the Order of the Hon'ble Bombay High Court shall be followed.

6(i). A letter dated 17th January, 2017 was sent by the Applicant to the other side informing the proposed "Leave and License" of certain

"Galas" with the details of the License Fees and the Security Deposit.

The information given, in brief, is reproduced below :-

"Sr. No.	Description of the premises	Name of the proposed Licensee	Tenure and consideration
1.	Unit No. C/09 of the said premises	IPC Healthcare Pvt. Ltd.	Term : 5 years"

"			<ul style="list-style-type: none"> • License fees: Rs.65,000 per month (5% escalation after every year) • Security Deposit: Rs.3,50,000 •
2.	Unit No. C/10 & 11 of the said premises	Rahul Distributors Pvt. Ltd.	<ul style="list-style-type: none"> • Term : 5 years • License fees: Rs.1,20,000 per month (5% escalation after every year) • Security Deposit : Rs.5,50,000"

6(ii). In response, the Petitioner / Respondent to the Application has given a reply on 23rd of January, 2017 asking for a status quo as directed by CLB. It has also been objected that the Hon'ble High Court had only permitted / directed to deal with the property if it is to be transferred on "Tenancy Right" basis, but not on "Leave and License" basis. In my humble understanding of the law and the procedure, if any specific direction is not contained in an Order, then it is open for the parties / litigants to deal with or act upon freely without any encumbrance but within the parameters of Law. In this case, after analyzing the Case Laws cited, it is justified to notice the distinction between two legal terms i.e. "Tenancy Rights" and "Leave and License Rights". After keeping this distinction in mind, I am of the view that in the absence of any specific restriction imposed, the Applicant can deal with the said two Galas within the parameters of Law.

6(iii). Nevertheless, without prejudice to the above observation, the restriction and the procedure laid down by the Hon'ble Court was that the Company shall notify in writing any proposal for transfer of tenancy and the consideration payable to the other side. The transfer should not be related to interested party. Further, the other side can make counter offer in respect of the said proposal by offering at least 5% higher than the consideration so offered. The Company thereafter is at liberty to accept or reject the counter offer. The Hon'ble Court vide sub para (d) has made an observation that in the event the other side failed to respond within 14 days, then the Company is at liberty to transfer the tenancy to any unrelated third party.

6(iv). In a situation when the undisputed fact is that the proposed parties are not related parties and there is no counter offer, to say, at least 5% higher than the offer of License Fees made by the Applicant, it is not only equitable but also justifiable to allow the Applicant to go ahead with the said proposal especially when the IPC Healthcare Pvt. Ltd. has given a time period of 14 days to confirm or reject their proposal. This view is taken with the main intention that the business affairs of the Company should not be stopped due to this litigation. The normal business activity of a going concern should not be adversely affected due to litigation. Moreover, by leasing out the properties, that too for a limited period of 5 years, no prejudice is going to be caused to the other side. Rather the shareholders / Directors shall be benefited by the said increased revenue generation.

6(v). In the light of the above factual and legal discussion as also the logic conveyed, it is hereby directed to go ahead with the Leave and License proposal with the said two parties on the terms and

conditions as on record. In this Impugned Application certain other legal points have been raised, however, those were neither pressed nor argued; hence at this preliminary stage, need no adjudication. The Application stands disposed of in the above terms and to be consigned to the Records.

Sd/-

Dated: 13th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)